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4<sup>o</sup> That unless they are satisfied that there was a confederacy between the prisoner & Ann Merton & that they acted in concert in the perpetration of the Homicide, nothing that she said or did not in the presence of the prisoner is any evidence against the prisoner.

5<sup>o</sup> If they are satisfied that there was a confederacy between the prisoner & Ann Merton & that they acted in concert in the perpetration of the Homicide, then nothing that was not done or said by Ann Merton not in the presence of the prisoner, would be evidence against the prisoner, except acts done in furtherance of the common designs and declaration accompanying such acts.

If the above instructions were given, as asked, in the charge of the Court to the Jury, the Jury having returned <sup>against</sup> a verdict of guilty <sup>against</sup> the prisoners, his counsel moved for a verdict de novo for the error in the Court in admitting the evidence accepted to on the trial. Rule granted Rule discharge. A motion was then made in arrest of judgment on the following grounds